

Police Culture on Trial in Case Against Officers in Killing of George Floyd

Derek Chauvin sits in a prison cell. The other three officers on the scene when George Floyd was murdered now face a trial of their own.

By Tim Arango

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[Follow live coverage of the civil rights trial against three ex-police officers in the killing of George Floyd.]

ST. PAUL, Minn. — Ever since the murder of George Floyd almost two years ago on a South Minneapolis street corner, the overwhelming focus of attention from the public and the legal system has been on the police officer who killed him, Derek Chauvin.

Mr. Chauvin was convicted of two counts of murder in a state trial last spring for kneeling on the neck of Mr. Floyd for more than nine minutes. He also pleaded guilty to federal crimes of violating Mr. Floyd's constitutional rights.

But Mr. Chauvin wasn't the only police officer there that day. Three others who were on the scene face a trial beginning Monday in a federal courthouse in downtown St. Paul, Minn., accused of willfully failing to intervene against Mr. Chauvin and help Mr. Floyd.

The case is an extraordinarily rare example of federal civil rights charges being filed against rank-and-file officers for not stopping the actions of a superior officer. Several experts say its outcome could have a greater impact on policing than even Mr. Chauvin's convictions.

That is because the case is about a far more common aspect of police culture than Mr. Chauvin's brutality: officers who do not intervene in the conduct of fellow officers.

Federal law requires police officers to intervene in the actions of other officers to stop constitutional violations, and courts have affirmed that obligation for decades. At the same time, police departments train officers to move against other officers to stop misconduct. But policing is highly hierarchical, and there is sometimes a stubborn culture of silence among officers when one of their own is accused of wrongdoing.

Surveillance video from May 25, 2020, shows officers attempting to take George Floyd into custody in Minneapolis. Court TV, via Associated Press

“That is far more common and insidious police misconduct than Chauvin’s extreme act of violence,” said Paul Butler, a professor at Georgetown University Law Center and a former federal prosecutor. “What these three defendants allegedly did and failed to do reflects police workplace culture that enables criminal acts committed by officers.”

If the three officers are convicted, “It would be an important step in dismantling the blue wall of silence when cops close ranks and refuse to intervene when they see another officer doing wrong,” Mr. Butler said.

Two of the officers on trial were rookies and on their first days on the job when Mr. Floyd, a Black man, was killed: Thomas Lane, 38, who was positioned on Mr. Floyd’s legs during the incident, and J. Alexander Kueng, 28, who was on Mr. Floyd’s back. The third officer, Tou Thao, 36, a veteran officer who was Mr. Chauvin’s partner and has a history of misconduct complaints, held back a crowd of bystanders who were growing distressed and angry over the murder they were witnessing in the fading daylight on Memorial Day 2020.

The term civil rights in this case does not involve race but the violation of Mr. Floyd’s constitutional rights to be free of unreasonable seizure and to not be deprived of liberty without due process.

Race was rarely explicitly brought up in the murder trial of Mr. Chauvin, who is white, even as the case inspired the largest racial justice protests in generations and focused the nation’s attention on police brutality against Black people. In the federal trial, one of the defendants, Mr. Kueng, is African-American, Mr. Thao is Asian American, and Mr. Lane is white.

Mr. Lane, who twice during the episode asked Mr. Chauvin if they should turn Mr. Floyd on his side, is charged with one count of failing to provide medical aid to Mr. Floyd, a duty that police officers have under the law. Mr. Kueng and Mr. Thao face the same charge, plus a count of failing to intervene with Mr. Chauvin’s use of force.

Thomas Lane, a former Minneapolis police officer, in June 2020. He is charged with one count of failing to provide medical aid to Mr. Floyd. Kerem Yucel/Agence France-Presse — Getty Images

The case is, “important because it centers the discussion on what do other people have a duty to do,” said Mark Osler, a former federal prosecutor who is a professor at the University of St. Thomas School of Law in St. Paul, Minn. “To step up and not defer to wrongdoers. And that’s a central discussion in policing right now.”

Defense attorneys for Mr. Kueng and Mr. Lane, the two rookies, are expected to place the blame on Mr. Chauvin and argue that the pair were following the lead of their senior officer. Mr. Thao’s lawyer is likely to argue that his client was too busy dealing with the crowd to know what exactly was happening to Mr. Floyd, according to legal experts. All three still face charges in state court of aiding and abetting murder, in a trial scheduled for June.

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To make their case, prosecutors will have to prove willfulness, a high standard under the law that implies some form of intent. In the past, federal prosecutors have been reluctant to bring these types of cases because of the difficulty proving willfulness.

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“The basic idea is that the officer has to know he is doing something wrong,” said Rachel Harmon, a former prosecutor in the Department of Justice’s Civil Rights Division who now teaches at the University of Virginia School of Law. “Doing something with the intent to do something that the law forbids. He doesn’t have to be thinking specifically in constitutional terms.”

For decades, courts have recognized that police officers have a duty to intervene against other officers. Following the 1991 beating of Rodney King by Los Angeles police officers, departments, including in Minneapolis, have trained recruits to move against fellow officers when they see misconduct.

But federal criminal cases — either against officers who used deadly force or those who stood by and watched — have been rare. Underscoring the difficulty of proving willfulness, the Justice Department has declined to bring charges in some of the highest-profile police killings in recent memory, including over the deaths of Eric Garner in Staten Island, Michael Brown in Ferguson, Mo., and Tamir Rice in Cleveland.

The Aftermath of George Floyd's Murder

What happened to George Floyd? On May 25, 2020, Minneapolis police officers arrested Mr. Floyd, a Black man, on a report that he had used a fake \$20 bill. Mr. Floyd died after Derek Chauvin, one of the police officers, pinned him to the ground with a knee, an episode that was captured on video.



One of the most well-known federal prosecutions of officers was the conviction of two police officers for the beating of King, after they were acquitted in state court. One of those convicted was a sergeant, Stacey Koon, who failed to intervene while other officers beat Mr. King.

Los Angeles police officers keep protesters away from a police cruiser that had been set on fire the evening of the Rodney King verdict in 1992 after the first trial of the four officers. Jim Wilson/The New York Times

At the state level, officers have also rarely been held to account for standing by when another police officer uses unlawful, deadly force. In the case of the police murder of Laquan McDonald in Chicago in 2014, the officer who shot him, Jason Van Dyke, was convicted of murder. But three other officers were acquitted on charges of lying about the shooting to protect Mr. Van Dyke.

One of the extraordinary aspects of Mr. Chauvin's state trial was the number of officers who took the witness stand to disavow the actions of their former colleague. "To continue to apply that level of force to a person prone out, handcuffed behind their back — that in no way, shape or form is anything that is by policy," said the Minneapolis police chief at the time, Medaria Arradondo, from the witness stand.

And outside the courtroom, law enforcement officials around the country cheered the convictions.

This time could be different. While prosecutors are expected to call officers to the stand to testify about the training the officers had on what to do when they see another officer using excessive force, the wider law enforcement community may have more sympathy for the three officers than they had for Mr. Chauvin, said lawyers who have been involved in legal cases against officers.

"Every cop out there is going to see themselves in their position," said John Marti, a former federal prosecutor in Minnesota. "They are going to remember back to the day when they were a young officer and they had the old bulls running around probably using heavy-handed force. And they are going to remember that day and think to themselves, 'There's no way I would have stood up to my training officer:'"

Mr. Chauvin, for his part, will loom over the proceedings. When nearly 300 prospective jurors arrived at the federal courthouse here Thursday morning, one of the first things the judge told them is to disregard anything they heard about Mr. Chauvin's crimes.

“The crimes that Mr. Chauvin pleaded guilty to are totally separate to those at issue here,” said Judge Paul A. Magnuson, who was appointed to the federal bench by President Reagan in 1981.

A jury of 18 people — 12 regulars and six alternates — was selected in one day last week, a sharp contrast to the nearly two weeks it took to pick a jury in Mr. Chauvin's state murder trial. The panel in this case is overwhelmingly white, partly a reflection that in federal cases courts can call jurors from across the state, including from areas that are whiter and more conservative than the Minneapolis metro area.

Experts say it is only a remote possibility that Mr. Chauvin is called to testify, although in his plea agreement he acknowledged that he was “aided and abetted” by his fellow officers, and that he had never threatened them to “disregard or fail to comply” with department policies.

“You don't want to have John Gotti cooperating against his soldiers,” Mr. Marti said. “You want his soldiers cooperating against John Gotti. You want to cooperate up, you don't want to cooperate down.”